The Challenge of Personal Data Protection in the Internet Age— Chinese Taipei's Experience

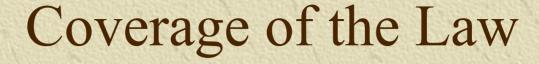
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Legislative Background (I)

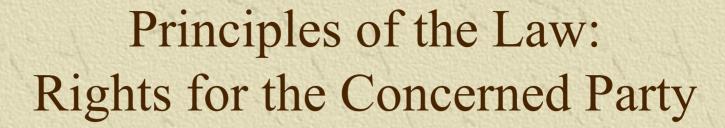
- ** the European Commission: "The Draft Council Directive on General Principles of Data Protection" (1990)
- ** Prohibiting the transfer of data to third party countries which "do not provide an adequate level of protection for the data".



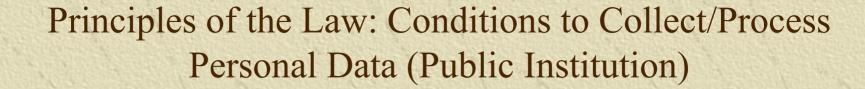
- ** Government of Chinese Taipei was pushing the Project of "Asian-Pacific Operational Hub."
- ** Lack of Personal Data Protection Law was deemed a flaw for the Project.
- ** Chinese Taipei enacted "the Computer-Processed Personal Data Protection Law" in 1995.



- ** Two categories of organization are covered by the Law:
 - Public Institution: any governmental agency.
 - Non-public institution: 8 regulated businesses
 - Hospital, school, telecommunication, financial, securities, insurance, mass media, and information collecting businesses.



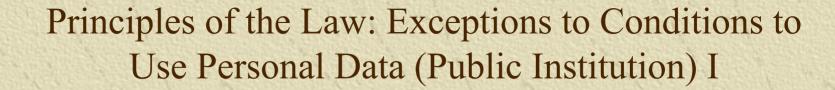
- Art. 4: Any concerned party shall not waive in advance or limit with special conditions the following rights exercisable under this Law in respect of his/her personal data:
 - 1. Inquiry and request for review;
 - 2. Request for duplicates;
 - 3. Request for supplements or amendments;
 - 4. Request for cessation of computerized processing and use; or
 - 5. Request for deletion.



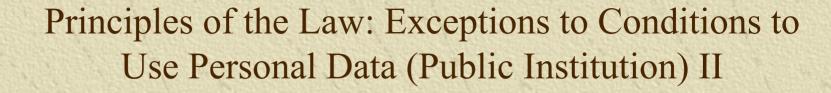
- * Art. 7: Any public institution shall not collect or computerized processing personal data unless it is for specific purposes and in conformity to any of the following circumstances:
 - 1. Within the necessary scope of its official functions as provided by laws and/or ordinances;
 - 2. With the written consent of the concerned party; or
 - 3. No potential harm to be done to the rights and interests of the concerned party.

Principles of the Law: Conditions to Use Personal Data (Public Institution)

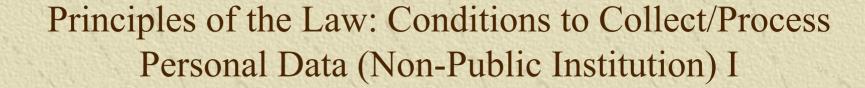
** Art. 8: The use of personal data by a public institution must be within the necessary scope of its official functions as provided by laws and /or ordinances and in conformity to the specific purposes of collection.



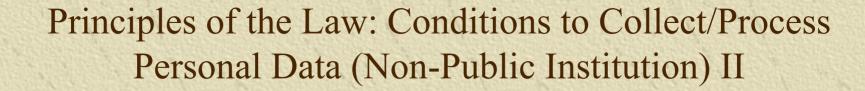
- * Art. 8: use beyond the specific purposes may be made under any of the following circumstances:
 - 1. Expressly provided by law;
 - 2. With legitimate cause and for internal use only;
 - 3. To protect national security;
 - 4. To enhance public interest;



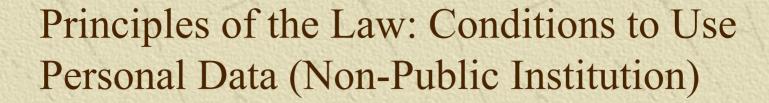
- 5. To avoid immediate danger to the life, body, freedom, or property of a concerned party;
- 6. Necessary for preventing grave damages to the rights and interests of others;
- 7. Necessary for academic research without causing harm to the major interests or others;
- 8. Favorable to the rights and interests of a concerned party; or
- 9. With the written consent of a concerned party.



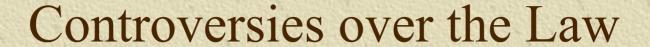
- Art. 18: Unless there is a specific purpose which has satisfied any of the following requirements, a non-public institution shall not collect or process by computer the personal data:
 - 1. Upon the written consent from the concerned party;
 - 2. Having a contractual or quasi-contractual relationship with the concerned party and having no potential harm to the concerned party;



- 3. Such personal data is already in the public domain and having no harm to the major interest of the concerned party;
- 4. For the purpose of academic research and having no harm to the major interest of the concerned party; or
- 5. Specifically provided by the Article 3(7)(ii) of this Law and any other laws.



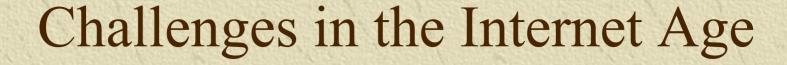
- Art. 23: Use of personal data by a non-public institution shall be within the necessary scope of the specific purpose of collection; however, use beyond the specific purpose may be made under any of the following circumstances:
 - 1. To enhance public interest;
 - 2. To avoid immediate danger to the life, body, freedom, or property of a concerned party;
 - 3. Where it is necessary for preventing grave damages to the rights and interests of others; or
 - 4. With the written consent of a concerned party.



- ** Does the Law only protect personal data processed by computer?
- ** Does the Law only regulate specific businesses? (the 8 regulated businesses)
- ****** Can the Law provide adequate protection in the Internet environment?

Implementation of the Law

- ** The Law provides monetary compensation and criminal punishment for violation of the Law, but very few cases were ever brought to court since its enactment.
 - Possible reasons:
 - Insufficient public awareness;
 - Under-coverage in the private sector; and
 - High cost of a law suit.



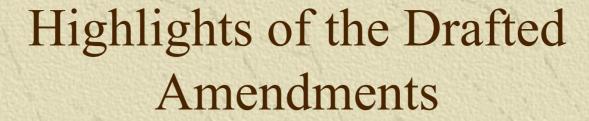
- ** Huge volume of personal data are collected, processed, and stored via the Net.
- ** Privacy problems raised by electronic commerce.
- ** Potential violations with "creative" use of personal data, such as data mining.
- * Insufficient law to regulate the environment.

Efforts to Promote Self-Regulation

- In 1999, Chinese Taipei published the draft of an E-Commerce Business Self-Regulatory Concord.
- ** At present, two private organizations, the Secure Online Shopping Association (SOSA) of Taipei and KPMG CPAs are engaged in the work of promoting Trust Marks, for which requirements include on-line privacy protection.
- **Consumers who wish to resolve disputes relating to privacy protection may register their complaints with the Net Consumer Association (Net080).**



- * Increase of public awareness of privacy protection.
- * Consensus to extend the coverage of the Law to meet the needs in the Internet age.
- * Two serious incidents reported in 2002, involving illegal sale of huge volume of personal data by employees of a financial institution and a telecom company.
- * Chinese Taipei initiated the process to amend the Law in 2002.



- ** From partial to full coverage in the private sector.
- ** Abolishment of the licensing and registration mechanism.
- * Emphasis of "informed" consent before use of (indirectly) collected information.
- * Signifying NGO's role in class action suits.
- * Special protection to children.

Two Questions

- * Who has the duty to inform in indirect data collection?
 - Information provider?
 - Information recipient?
- * To what extent are personal data protected?
 - Name? Address? Telephone number? Financial record?
 Medical record?
 - Dilemma: protecting privacy v. promoting electronic commerce.

Conclusion

Chinese Taipei commits itself to:

- * Encouraging self-regulation in the private sector.
- * Adopting globally accepted principles of privacy protection in the Law.
- * Promoting public awareness of privacy rights.
- ** Making the level of privacy protection adequate in the Internet environment.
- * Striking a balance between privacy protection and other legitimate causes.